

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 29 3 59 PM '93

MM Docket No. 93-249

DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Calabash and Tabor City,
North Carolina)

RM-8330

NOTICE OF PROPOSED RULE MAKING

Adopted: September 15, 1993; Released: September 29, 1993

Comment Date: November 22, 1993

Reply Comment Date: December 7, 1993

By the Assistant Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Great American Media, Ltd. I ("petitioner"), requesting the substitution of Channel 285C3 for Channel 285A at Tabor City, North Carolina, the reallocation of Channel 285C3 from Tabor City to Calabash, North Carolina, and the modification of Station WYNA's license to specify Calabash as its community of license. Petitioner states that it will apply for the channel, if allotted.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that the reallocation of Channel 285C3 from Tabor City to Calabash is in the public interest because it will not deprive Tabor City of its sole local aural transmission service,¹ and will provide Calabash with its first local aural transmission service. It states that the incorporated community of Calabash, with a 1990 U.S. Census population of 1,210 persons, has its own local government consisting of a board of commissioners, its own fire department, post office and approximately 55 businesses. Further, petitioner notes that Calabash is not located in or adjacent to an urbanized area. Petitioner also states that the reallocation would allow Station WYNA to provide service to an additional 66,240 persons, and that while some 9,648 persons would lose service from Station WYNA, those persons in the loss area would continue to receive reception service from seven other FM stations. We

note, however, that petitioner does not describe the number of reception services that currently serve the gain area or whether the gain area will include any underserved areas. Petitioner is requested to address these issues in its comments.

3. We believe the public interest would be served by proposing the substitution of Channel 285C3 for Channel 285A and the reallocation of Channel 285C3 from Tabor City to Calabash since it could provide Calabash with its first local aural transmission service and enable Station WYNA to expand its service area. Channel 285C3 can be allotted to Calabash in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.1 kilometers (12.5 miles) north to accommodate petitioner's desired transmitter site.² Use of this site is short-spaced to the present operation of Station WNMB, Channel 288A, North Myrtle Beach, South Carolina. However, Station WNMB's license has been modified to specify Channel 290C3 for which a construction permit has been granted (BPH-920305IF).

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Calabash, North Carolina	--	285C3
Tabor City, North Carolina	285A	--

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **November 22, 1993**, and reply comments on or before **December 7, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Wade H. Hargrove, Esq.
Tharrington, Smith & Hargrove
209 Fayetteville Street Mall
P.O. Box 1151
Raleigh, North Carolina 27602
(Counsel to petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's

¹ Tabor City is also served by Station WTAB(AM).

² The coordinates for Channel 285C3 at Calabash are North

Latitude 34-04-05 and West Longitude 78-31-30.

Rules. See *Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.